

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE
TRIBUNAL, KOLKATA
EASTERN ZONAL BENCH : KOLKATA
REGIONAL BENCH - COURT NO.2**

Customs Appeal No.76269 of 2018

(Arising out of Order-in-Original No.30/CUS/CC(P)/WB/2017 dated 31.01.2018 passed by Commissioner of Customs (Preventive), West Bengal, Kolkata.)

M/s. United Custom House Agency Private Limited

(11, Clive Row, 1st Floor, Kolkata-700001.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

WITH

Customs Appeal No.76270 of 2018

(Arising out of Order-in-Original No.30/CUS/CC(P)/WB/2017 dated 31.01.2018 passed by Commissioner of Customs (Preventive), West Bengal, Kolkata.)

Shri Raj Kumar Shaw, Proprietor,

M/s. Sundary Fashion,

(3 & 4, Lindsay Street, Kolkata-700087.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

AND

Customs Appeal No.76271 of 2018

(Arising out of Order-in-Original No.30/CUS/CC(P)/WB/2017 dated 31.01.2018 passed by Commissioner of Customs (Preventive), West Bengal, Kolkata.)

Shri Prakash Ghosh, Proprietor,

M/s. Overseas Shipping Agency,

(P-41, Princep Street, 5th Floor, Room No.507, Kolkata-700072.)

...Appellant

VERSUS

Commissioner of Customs (Preventive), Kolkata

.....Respondent

(15/1, Strand Road, Custom House, Kolkata-700001.)

APPEARANCE

Shri H.K.Pandey, Advocate for the Appellant (s)

Shri M.P.Toppo, Authorized Representative for the Respondent (s)

CORAM:HON'BLE SHRI P.K.CHOUDHARY, MEMBER(JUDICIAL)

FINAL ORDER NO. 75525-75527/2022

DATE OF HEARING : 26 August 2022

DATE OF DECISION : 16 September 2022

P.K.CHOUDHARY :

Individual appeals have been filed against common Order-in-Original No. 30-CUS-CCP-WB-2017 dated 31.01.2018 passed by the Commissioner of Customs (Preventive), West Bengal by the exporter Shri Raj Kumar Shaw, Proprietor of M/s Sundary Fashion, Shri Prakash Ghosh, Proprietor of M/s. Overseas Shipping Agency and M/s. United Customs House Agency (P) Ltd. (UCHA in short). By passing the impugned Order, the Adjudicating Authority has ordered confiscation of goods loaded in two vehicles bearing Registration Nos. WB-23 X 1615 and WB-23-4778 as well as the vehicles with option to redeem by payment of Fine of Rs. 2.00 Lakhs and Rs.20.00 Lakhs respectively for the goods and Rs.25,000/- for vehicle No.WB-23 X 1615 and Rs.50,000/- for vehicle No.WB-23-4778. Also Penalty of Rs. 5 lakhs has been imposed upon the exporter Shri Raj Kumar Shaw, Proprietor of M/s Sundary Fashion under Section 114(iii) of the Customs Act, 1962 and Penalty of Rs. 5 lakhs each has been imposed upon Shri Prakash Ghosh, Proprietor of M/s Overseas Shipping Agency and M/s United Customs House Agency (P) Ltd. under Section 114(iii) and 114 AA of the Customs Act, 1962. No appeal has been filed by any of the owners of the carrier vehicles. Since all the three appeals are against the common Order-in-Original arising out of same cause of action, they are taken up together for hearing and disposal.

2. Briefly stated the facts of the case are that on the basis of specific Intelligence that some exporters were attempting to smuggle synthetic fabric materials to Bangladesh through Petrapole LCS,

without declaring the same by tagging some illegal consignments with genuine export of similar goods in smaller quantity under cover of licit Shipping Bill, the Officers of Directorate of Revenue Intelligence (DRI), Kolkata visited Petrapole, LCS on 04.08.2010. The office of M/s. Overseas Shipping Agency near Petrapole, LCS was also visited by the DRI officers. The copies of certain export documents related to M/s Sundary Fashion and others were recovered from Shri Ratan Biswas, G-Card holder of CHA M/s UCHA who was present in the office of M/s Overseas Shipping Agency. The documents were (a) One Truck Register, (b) Bill of Export No. 16413/Exp/PTPL/DEPB/2010 dated 03.08.2010, (c) Invoice No. SF/28/10-11 dated 02.08.2010 with packing list. (d) Procurement documents, (e) Transport documents and (f) another set of same numbered Invoice No. i.e. Invoice No. SF/28/10-11 dated 02.08.2010. On the next day by serving a letter dated 05.8.2010, the DRI requested the Manager, CWC, Petrapole, with a copy served to the Assistant Commissioner of Customs, Petrapole L.C. Station not to deal with/part with/remove/allow anyone to deal with the cargo Loaded in 7 vehicles including WB-23 X 1615 and WB-23-4778. Ultimately by drawing a Panchnama dated 30.10.2010, a notice under Section 110 of the Customs Act, 1962 was served upon the Manager, CWC Petrapole, being the custodian of the cargo, directing him not to remove, part with or otherwise deal with the goods found loaded in the said carrier vehicles WB-23 X 1615 and WB-23-4778. The said seizure/detention notice was said to be served by the Officer on reason to believe that the goods were attempted to be exported to Bangladesh by M/s Sundary Fashion by resorting to overvaluing the goods for getting undue benefit of export incentive schemes and thereby rendering the goods liable to confiscation under Customs Act and that it was not practicable to seize such goods. On request from the exporter, the seized goods were provisionally released on furnishing of Bond for Rs.6,51,229.00 with Bank Guarantee of Rs.1,62,807.25 in respect of goods loaded in vehicle WB-23 X 1615 and Bond for Rs.66,87,393.96 with Bank

Guarantee of Rs.16,71,848.50 in respect of goods loaded in vehicle No. WB-23-4778. Seized vehicles were also released provisionally.

3. During investigation, the exporter submitted Invoice No. SF/29/10-11 dated 02.8.2010 for export sale of 6560 kgs of Sarees & fabrics and stated that goods covered under the Invoice loaded in vehicle No. WB-23-4778 had been sent to CWC Petrapole along with 441 Kgs of Fabrics loaded in Vehicle No. WB-23 X 1615 and covered under Invoice No. SF/28/10-11 dated 02.8.2010. The buyer was M/s Hera International, Bangladesh and the term of payment was under Letter of Credit and/or Delivery against Payment (DP). As payment against the consignment covered under Invoice No. SF/29/10-11 dated 02.8.2010 was not yet cleared, preparation and presentation of Bill of export against the same was kept on hold. The payment against Invoice No. SF/28/10-11 dated 02.8.2010 was covered by Letter of Credit, so Bill of Export for this being No. 16413/EXP/PTPL/DEPB/2010 dated 03.08.2010 was processed by the CHA. Regarding recovery of unauthenticated copy of the Invoice bearing No. SF/28/10-11 dated 02.8.2010 with different quantity, he expressed his ignorance and during examination by the investigating Officer he stated that the invoice might have been made for submission before the Bangladesh Customs for less import duty. He stated that the said Invoice did not bear the handwriting or signature of any of his employees or his own.

4. Shri Prakash Ghosh, proprietor of M/s Overseas Shipping Agency, the Carrying & Forwarding Agent, during examination by the investigation stated that in terms of a written contract with the CHA M/s United Customs House Agency (P) Ltd. he had allowed their G-card holder Shri Ratan Biswas to work from his office at border. He was engaged in transportation of Import and export goods through Petrapole Land Customs Station. Services of the CHA were provided to the intending customers by the said CHA firm through their G-card holder. Necessary compliance of Customs House Licencing Regulation was duly made by the CHA firm. As per the agreement, he used to pay the salary to said Ratan Biswas which was to be adjusted against the

service charges raised by the CHA firm. Regarding recovery of the unauthenticated Invoice having a parallel number but different quantity, he stated that it might have been brought to his office by the Bangladeshi C & F Agent and to be handed over to the Lorry driver going to Bangladesh. Such practice is not uncommon at border so that less import duty could be levied in Bangladesh.

5. Shri Shankar Prasad Verma, Director of M/s United Customs House Agency (P) Ltd. in his statement recorded during investigation confirmed the engagement of their G-Card holder at Petrapole L.C. Station on behalf of the firm in terms of the agreement with Shri Prakash Ghosh. He further stated that Regulations as stipulated under CHLR were duly complied with in relation to the questioned Bill of Export.

6. Show Cause Notice dated 29.6.2015 was issued by the Additional Director General, DRI, Kolkata Zonal Unit whereby violation of the provisions of Sections 33,34,40(a) & 50(1) of the Customs Act, 1962 were alleged and proposal for confiscation of the export goods under Sections 113(f), 113 (g) & 113 (h)(i) of the Customs Act, 1962 and that of vehicles under Section 115(2) *ibid* was made. Also penalty upon the exporter under Section 114(iii) of the Act; and upon the CHA M/s UCHA and the C&F Agent Prakash Ghosh u/s 114(iii) & 114AA of the Act was proposed

7. In reply to the SCN, Shri Raj Kumar Shaw, the exporter, *inter alia* submitted that the Invoice and other documents related to goods loaded in Vehicle No. WB-23-4778 were lying in his office pending finalization of payment; He had no knowledge of any parallel Invoice said to be recovered on 04.8.2010 for which no formal Panchanama had been drawn. Regarding alleged violation of the provisions of Sections 33,40(a) & 50(1) of the Customs Act, 1962 and proposed confiscation of the export goods under Sections 113(f), 113 (g) & 113 (h)(i) of the Customs Act, 1962, he submitted that as an exporter he is not supposed to know how are the vehicles parked in Central Warehousing Corporation (CWC) and what is the procedure for

examination and clearance for export of the consignment. However, to the best of his knowledge, there was no procedural violation in parking and placing the cargo in CWC.

8. Shri Prakash Ghosh, in his reply to the Show Cause Notice submitted that he was a forwarding agent. Regarding alleged violation of the provisions of Sections 33, 34, 40(a) & 50(1) of the Customs Act, 1962, he submitted that parking of the vehicles in CWC was in consonance of the procedure laid down vide Public Notice No. 08/Cus/WB/2003 dated 11.7.2003 issued by the jurisdictional Commissioner of Customs. It was also confirmed by the manager CWC vide his letter dated 12.8.2010 and by the Assistant Commissioner of Customs, Petrapole L.C.S. vide his letter C. No. II (26)306/PTPL-Rd/MISC/Cargo/09 dated 12.8.2010 addressed to the Senior Intelligence Officer. Agitating against allegation that he was acting as a *de facto* CHA, he submitted that engagement of Shri Ratan Biswas at Petrapole L.C.S. was in terms of a written agreement with the CHA firm M/s UCHA and there was no illegality therein.

9. Shri Shankar Prasad Verma, Director of M/s United Customs House Agency (P) Ltd. submitted that the engagement of their G-Card holder at Petrapole L.C. Station was on behalf of the firm in terms of the agreement with Shri Prakash Ghosh and there was nothing illegal about it. Moreover, proceeding under CHLR is a completely different proceeding and no adverse inference should be drawn with reference to present proceeding where confiscation etc. have been proposed for alleged attempt of illegal export. He mentioned that in a similar proceeding initiated against another exporter M/s Siddhant Enterprise, the Ld. Adjudicating Authority has dropped it and the Department has not challenged the same. Accordingly, it was submitted that proceeding against them in the instant case should be dropped.

10. On conclusion of the Adjudication proceeding, the goods loaded in WB23X 1615 valued at Rs.6,51,229/- was ordered for confiscation under sections 113(f), 113 (g), 113 (h) & 113 (i) of the Act with an option to redeem the same on payment of Rs.2 Lakhs; the goods

loaded in WB23 4778 valued at Rs.66,87,394/- was ordered for confiscation under Sections 113(f), 113 (g) 113 (h) & 113 (i) of the Act with an option to redeem the same on payment of Rs.20 Lakhs. Penalty of Rs.5 Lakhs was imposed on the exporter under sections 114(iii) of the Customs Act, 1962 and Rs.5 Lakhs upon each of the CHA and the C&F Agent imposed under sections 114(iii) and 114 AA of the Customs Act, 1962 without being apportioned.

11. Shri H. K. Pandey, Learned Advocate for the appellants pointed out that though the goods were detained on 05.08.2010 formal seizure was made on 30.10.2010. As it appears from the Inventory dated 30.10.2010, the goods were seized on reasonable belief that the consignments were attempted to be exported by resorting to overvaluing the goods for getting benefit of export incentive scheme. The SCN which was issued on 29.6.2015 after almost 5 years from the seizure without seeking extension of time from the appropriate authority, alleged violation of the provisions of Sections 33,34,40(a) & 50(1) of the Customs Act, 1962 and proposed confiscation of the export goods under Sections 113(f), 113 (g) & 113 (h)(i) of the Act and that of vehicles under section 115(2) *ibid*. Consequential penalty upon the exporter under Section 114(iii); and upon the CHA and the C&F agent under sections 114(iii) & 114AA was proposed in the SCN. Thus, the reasonable belief leading to the seizure of goods was not corroborated by the investigation. The entire proceeding, therefore, is vitiated legally.

11.1 Ld. Advocate further submitted that contravention of sections 33, 34, 40(a) and 50 of the Customs Act, 1962 was alleged in the SCN and confiscation and imposition of consequential fine and penalty was proposed accordingly. Section 33 states that unloading and loading of goods at approved places only; Section 34 states that goods not to be unloaded or loaded except under supervision of Customs Officer; Section 40 states that export goods not to be loaded unless duly passed by proper officer- and Section 50 envisages filing of Bill of export for goods to be exported. He pointed out the findings of the Ld.

Adjudicating Authority that generally export goods are brought to the CWC parking for examination with all documents including assessed Shipping Bills prior to export out of India. It is thus an admitted position that export goods are subjected to examination vis-à-vis Documents which includes Bill of Export also and the alleged violations of Sections 33, 34, 40(a) and 50 of the Customs Act, 1962 are solely linked with examination of the export cargo by the Customs and the goods were well recorded in CWC godown, the allegations are assumptive only.

11.2 He quoted from the Public Notice No. 08/Cus/WB/2003 dated 11.07.2003 issued by the Commissioner of Customs, West Bengal, Kolkata and explained in details the procedure followed at Petrapole Land Customs Station for clearance of goods for export. In the given situation that there are multi stage check points, there is a foolproof system at place which is rigorously followed by Petrapole Customs in loading, unloading, examination and tracking the vehicle till the export consignment enters into the territory of Bangladesh. It cannot be imagined that a vehicle could be taken out from the border without being noticed by law enforcement agency.

11.3 Regarding a parallel invoice, he submitted that neither its authenticity has been ascertained as there was no panchnama drawn showing its recovery nor its purpose is defined. That it could be used by Bangladeshi importer for under valuation is also not corroborated by reliable evidence.

11.4 Regarding imposition of penalty upon the CHA M/s UCHA, Ld. Advocate submitted that proceeding under CHLR was initiated against them and his Licence was put under suspension by the Proper Authority against which they had preferred appeal before the Tribunal. However, during pendency of the appeal, the suspension order was revoked by the Authority and accordingly the appeal was withdrawn vide CESTAT Final Order No. FO/A/75447/2015 dated 19/8/2015.

12. He further submitted that penalty under Section 114AA of the Act is exclusively imposable in cases involving fraudulent exports. In

this regard, he made reference to paras 65 and 66 of the 27th Report of the Standing Committee on Finance which is reproduced herein below:

The Ministry also informed as under: "The new Section 114AA has been proposed consequent to the detection of several cases of fraudulent exports where the exports were shown only on paper and no goods crossed the Indian border. The enhanced penalty provision has been proposed considering the serious frauds being committed as no goods are being exported, but papers are being created for availing the number of benefits under various export promotion schemes."

"The Committee observes that owing to the increased instances of willful fraudulent usage of export promotion schemes, the provision for levying of penalty upto five times the value of goods has been proposed. The proposal appears to be in the right direction as the offences involve criminal intent which cannot be treated at par with other instances of evasion of duty. The Committee, however, advise the Government to monitor the implementation of the provision with due diligence and care so as to ensure that it does not result in undue harassment."

13. Concluding his argument, Ld. Counsel for the Appellants prayed for setting aside the impugned Order of confiscation of goods and imposition of penalties upon the Appellants with consequential relief.

14. Shri M.P.Toppo, Learned Authorized Representative for the Revenue reiterates the findings in the impugned order.

15. Heard both sides and perused the appeal records.

16. The proceeding was initiated by DRI with detention of certain consignments in Central warehousing Corporation at Petrapole including the two vehicles loaded with export consignment of the appellant exporter on 04.8.2010. On the same day the office belonging to the C&F Agent M/s Overseas Shipping Agency was also visited

where G-card holder of the Custom House agent was present. He produced documents like Truck Register, assessed Bill of Export No. 16413/Exp/PTPL/DEPB/2010 dated 03.08.2010 with Invoice No. SF/28/10-11 dated 02.08.2010 with packing list, Procurement documents and Transport documents in relation to export consignment of exporters. It is reported that another set of same numbered Invoice No. i.e. Invoice No. SF/28/10-11 dated 02.08.2010 was also found from the office of the C & F agent. The recovery of said parallel Invoice having different quantity of goods triggered the present proceeding. Though, no Panchnama was drawn showing recovery of the said Parallel Invoice, the said G-card holder or the proprietor of the C&F firm did not dispute its existence. During examination the proprietor of the C&F firm is on record to have stated that it may have been brought by Bangladeshi C& F Agent for its production before Bangladesh Customs by the driver of the truck for the purpose of levy of less duty. Formal seizure of goods and the carrier vehicles was made by DRI on 30.10.2010, on stated reason to believe that the goods were attempted to be exported to Bangladesh by M/s Sundry Fashion resorting to overvaluing the goods for getting undue benefit of export incentive schemes and thereby rendering the goods liable to confiscation under Customs Act.

17. During pendency of investigation goods were provisionally released to the exporter on furnishing of bond. Show Cause Notice was issued after a long gap on 29.6.2015 alleging violations of Section 33, 34, 40(a) and 50 of the Customs Act, 1962 which are solely linked with examination of the export cargo by the Customs. This shows that the Revenue did not find sufficient evidence in support of its initial intelligence that the export was intended for getting undue benefit of export incentive schemes by overvaluation. The voluminous investigation report lost relevance as the allegation is confined to violations of Section 33, 34, 40(a) and 50 of the Act.

18. For better understanding , the sections are reproduced below :-

Section 33. Unloading and loading of goods at approved places only. -

Except with the permission of the proper officer, no imported goods shall be unloaded, and no export goods shall be loaded, at any place other than a place approved under clause (a) of [section 8](#) for the unloading or loading of such goods.

Section 34. Goods not to be unloaded or loaded except under supervision of customs officer. -

Imported goods shall not be unloaded from, and export goods shall not be loaded on, any conveyance except under the supervision of the proper officer:

Provided that the Board may, by notification in the Official Gazette, give general permission and the proper officer may in any particular case give special permission, for any goods or class of goods to be unloaded or loaded without the supervision of the proper officer.

Section 40. Export goods not to be loaded unless duly passed by proper officer. -

The person-in-charge of a conveyance shall not permit the loading at a customs station-

(a) of export goods, other than baggage and mail bags, unless a shipping bill or bill of export or a bill of transshipment, as the case may be, duly passed by the proper officer, has been handed over to him by the exporter;

Section 50. Entry of goods for exportation. -

(1) The exporter of any goods shall make entry thereof by presenting electronically on the customs automated system to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in such form and manner as maybe prescribed:

Provided that the Principal Commissioner of Customs or Commissioner of Customs may, in cases where it is not feasible to make entry by presenting electronically [on the customs automated system, allow an entry to be presented in any other manner.

19. I have also perused the Public Notice No. 08/Cus/WB/2003 dated 11.07.2003 issued by the Commissioner of Customs , West Bengal, Kolkata. It prescribes the procedure for movement/examination/clearance of export goods through CWC complex and their tracking to the physical border. Paragraph 6 of the said Public Notice is very much relevant in the present case, which stipulates inter-alia, that export clearance to be duly recorded on the Bill of Export. A copy of the Bill of Export should be handed over to the driver of the 1st vehicle of the

convoy in case of more than one vehicle is engaged in the transportation of cargo under cover of a Bill of Export. The said driver will produce the Bill of Export before the exit gate-in-charge of M/s CWC Complex, who will affix a rubber stamp thereon indicating pass out of concerned vehicles from CWC Complex with date and time. Thereafter the said Bill of Export should be produced to the Customs Officer posted at the exit point in India, who will allow each of the vehicles recorded in the said Bill of Export to cross the border and put an endorsement on the said Bill of Export certifying that all the vehicles have crossed over to Bangladesh and retain the said Bill of Export for being preserved as permanent record.

Paragraph 7 of the notice stipulates that CWC will make arrangement for proper and scientific parking of the vehicles in herringbone formation to facilitate easy entry and exit of the cargo. This shows that parking of a vehicle at a particular place is prerogative of CWC officials and the exporter or to say his agent has nothing to do with it.

20. I find from the records that both CWC and Customs confirmed that loaded trucks are allowed to be parked in the CWC and it is not mandatory to allow entry only after assessment of the Bill of Export. Examination of consignment as per customs norms is conducted inside CWC parking before 'Let Export order' given by the Proper Officer of Customs. It is not disputed that trucks loaded with goods were parked in CWC parking which is notified as custodian of Import and export goods and that those were recorded in their books and that clearance for export could be allowed after examination and under physical supervision of the Customs Officer right from the CWC parking to Physical border, gives no space for doubt that it could be smuggled. The proceeding is based on the allegation that the goods loaded in WB23 4778 would have been exported under cover of another vehicle in respect of that the bill of export was assessed by the Customs Officer.

21. I agree with the submission that the said trucks parked in CWC cannot be treated as foreign going vehicle until Bill of export is submitted and examination of the cargo is physically done by the customs. It has been disclosed by the authorities of CWC and Customs that the vehicle becomes foreign bound only after appraisalment of Bill of Export and examination of goods which was pending. Other findings on procurement of documents produced by the exporter and inspection by SGS are not relevant as overvaluation and consequential gain is not alleged. In consideration of the factual matrix of the case, I find that the Revenue has totally failed to adduce tangible evidence in support of the allegation to sustain the impugned order of confiscation.

22. I find that the penalties of Rs.5 lakhs have been imposed upon the CHA and the C&F Agent each under Sections 114 (iii) and 114AA of the Customs Act, 1962 without assigning and apportioning the quantum of penalty. Reference to the value adopted for the purposes of redemption of the confiscated goods and that penalty under Section 114 of Customs Act, 1962 has stemmed from confiscation for alleged non-declaration of goods. The value declared by the exporter is not challenged though the investigation triggered on the assumption that there could be overvaluation of the consignment. The quantum of the penalties has been arbitrarily decided. It is also noticed that Section 114AA of Customs Act, 1962 has been invoked for the roles of the CHA and C&F Agent in allegedly having knowledge of fabrication of the parallel Invoice. This document was, apparently, not furnished, nor required to be furnished, with the bills of export. This was meant for production before Bangladesh Authorities according to the uncorroborated evidence. The existence of, and the contents in, that document does not have any significance to, or nexus with, the situation referred to in Section 114AA of Customs Act, 1962. It certainly could not have had anything to do with the uncleared consignments as Shipping Bill in respect of the consignment loaded in WB23 4778 was yet to be filed. I am not able to find any specific

charges in the SCN which directly implicates the appellants to have themselves caused falsification of any document. Also nowhere in the discussion and finding portion of the adjudication order has the authority discussed or justified the imposition of penalty under Section 114AA *ibid* in the matter.

23. I find that the Customs Broker (CHA) has only filed the Bill of Export pertaining to the goods loaded in WB-23 X 1615. DRI conducted the investigation and *prima facie* found that another vehicle loaded with export goods of same exporter was likely to be exported without filing export documents with Customs. Further I find that in the present case, penalty has only been imposed on the CHA and C & F Agent under Section 114AA of the Act and no penalty has been imposed on the exporter. Further, I find that the ingredients of Section 114AA of the Act are not applicable to the CHA/ C & F Agent and is meant against the fraudulent exporter as is made out from 27th Report of the Standing Committee on Finance (cited *supra*). I also find that in the present case, the Department has failed to prove that there was a *mala fide* and willful mis-representation by the Customs Broker. It seems that the Commissioner has totally misunderstood the facts and has wrongly observed that the appellants Customs Broker and the C & F have been operating from the same premises which leads one to suspect the *bona fides* of the appellants. This finding of the Commissioner is factually incorrect and without any basis. Further, the Commissioner on the basis of these facts has wrongly come to the conclusion that the C & F Agent is involved in the illegal export whereas he is only a Carrying and Forwarding Agent and has been facilitating transporting, loading and unloading on the basis of the documents furnished by the exporter. The allegation against the C & F Agent has not been corroborated through any financial investigation and one cannot be punished on the basis of assumptions and presumptions.

24. In view of the above, the appeals filed by the appellants being Nos. C/76269/2018/2018, C/76270/2018 and C/76271/2018 are allowed with consequential relief.

(Order pronounced in the open court on 16 September 2022.)

Sd/
(P.K.CHOUDHARY)
MEMBER (JUDICIAL)

sm